

EDPS comments on CEDEFOP's draft internal rules concerning restrictions of certain rights of data subjects (Article 25 of the Regulation (EU) 2018/1725)

1. Introduction

These comments refer to CEDEFOP's draft implementing rules concerning restrictions on certain rights of data subjects (pursuant to Article 25 of Regulation (EU) 2018/1725, hereinafter 'The Regulation'¹).

The EDPS' comments refer to the documents submitted on 5 March 2020. We provide these comments in accordance with Article 41(1) of the Regulation.

Firstly, we would like to highlight the EDPS Guidance on Article 25 of the Regulation², published on 9 March 2020.

Secondly, as mentioned in your letter, we take note that CEDEFOP's draft implementing 'rules are identical with EUROFOUND's finalised rules, which reflect comments EUROFOUND received from EDPS in December 2019'.

2. General comments

- We welcome that CEDEFOP will only restrict data subject's rights based on the proposed internal rules, which provide a clear legal basis thereto.
- The EDPS welcomes the fact that the draft internal rules provide for the obligation to document the application of restrictions.
- The EDPS also takes note of the fact that CEDEFOP will perform a necessity and proportionality test on the need for the restriction of data subjects' rights.
- In relation to this necessity principle, the EDPS has underlined that restrictions should be temporary and be lifted when their causes no longer apply. Therefore, the EDPS notes with satisfaction that restrictions will be reviewed every six months.
- Concerning the data subjects' right to information, we take note that CEDEFOP will publish data protection notices or records on its website and/or intranet containing information on the potential restriction of data subjects' rights.

3. EDPS recommendations

- **Recommendation 1:** The EDPS welcomes the link made regarding the processing operations in which restrictions may be imposed and the legal grounds for restrictions (Article 3(1) of the draft internal rules). The draft internal rules refer to Article 25(1) points (c), (e), (g) and (h) of the Regulation as possible grounds for restrictions concerning point (e) - for the processing of internal and external complaints. As specified in the EDPS Guidance on Article 25 of the Regulation, a

¹ OJ L 295, 21.11.2018, p. 39.

² Available on the EDPS website via: https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidance-art-25-regulation-20181725_en

restriction based on Article 25.1 (e) ‘could be applied by the CJEU in the exercise of their judicial function’. EDPS thus recommends revising the draft implementing rules so as to remove the possibility to apply a restriction based on Article 25(1)(e) in this specific circumstance.

- **Recommendation 2:** Article 3(6) of the draft internal rules state ‘Restrictions shall be lifted as soon as the circumstances that justify them no longer apply. In particular, where it is considered that the exercise of the restricted right would no longer cancel the effect of the restriction imposed or adversely affect the rights or freedoms of other data subjects.’ The EDPS recommends redrafting this paragraph given that, as currently drafted, the second phrase of the paragraph is unclear as regards the action to be pursued.
- **Recommendation 3:** The EDPS welcomes the fact that, in accordance with recital 14 and Article 4, the Data Protection Officer (DPO) will be informed about restrictions. Under these provisions, the DPO will be informed ‘at the moment when the restriction is applied and during subsequent reviews and involve him or her throughout the entire procedure until the restriction has been lifted.’ (Recital 15) and ‘whenever the controller restricts the application of data subjects’ rights, or extends the restriction’ (Article 4(1)). The EDPS recommends that the internal rules also provide for involvement of the DPO before any restriction is intended to be applied.
- **Recommendation 4:** Article 8 of the draft internal rules allows CEDEFOP to restrict the communication of personal data breaches to the data subject in the framework of harassment procedures. However, in this context it is unclear which of the grounds in Article 25(1) of the Regulation would require restricting communication of personal data breaches. Therefore, the EDPS recommends adapting Article 8 so as to remove the possibility to restrict the communication of personal data breaches to the data subject in the framework of its anti-harassment procedures.

Brussels, 25th March 2020